

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

UNITED STATES OF AMERICA

v.

SHAWN HAMILTON

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Case No. CR407-122

REPORT AND RECOMMENDATION

Defendant seeks leave to proceed in forma pauperis ("IFP") in pursuing his appeal of the Court's decision to deny his 28 U.S.C. § 3582(c)(2) sentence reduction motion. (Doc. 121.) Despite his apparent poverty, however, "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). A defendant's good faith is demonstrated when he seeks appellate review of any issue that is not frivolous. *United States v. Alvarez*, 506 F. Supp. 2d 1285, 1290 (S.D. Fla. 2007), *citing Coppedge v. United States*, 369 U.S. 438 (1962). Hence, an application to appeal in forma pauperis may be denied "if it appears -- objectively -- that the appeal cannot succeed as a matter of law." *Id.*, *citing DeSantis v. United Technologies Corp.*, 15 F. Supp. 2d 1285, 1289 (M.D. Fla. 1998), *aff'd*, 193

F.3d 522 (11th Cir. 1999). Further, a case is frivolous for IFP purposes if it appears there is "little or no chance of success." *Id.*, citing *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993).

Here, the district judge, exercising his discretion, declined to reduce Hamilton's sentence under the Fair Sentencing Act of 2010, Pub. L. 111-220 and related United States Sentencing Guidelines provisions. (Doc. 117.) Hamilton has not offered any facts or argument suggesting that the judge's decision amounted to an abuse of discretion. Hence, the Court certifies that Hamilton's appeal is not taken in good faith under 28 U.S.C. § 1915. His motion to proceed IFP on appeal should be **DENIED**.

SO REPORTED AND RECOMMENDED this 28th day of March, 2012.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA